

(2015) 03 BOM CK 0131

In the Bombay High Court

Case No : Criminal Application No. 4364 of 2014

Mayur Mozes Khajekar and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Divorce Act, 1869 — Section 10

Penal Code, 1860 (IPC) — Section 323, 34, 498-A, 504, 506

Citation : (2015) ALLMR(Cri) 3176

Hon'ble Judges : I.K. Jain, J.; T.V. Nalawade, J.

Bench : Division Bench

Advocate : B.V. Wagh, for the Appellant; K.S. Patil, APP, Advocates for the Respondent

Judgement

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal. The learned APP is also heard.

2. The proceeding is filed under section 482 of Criminal Procedure Code for quashing of FIR in CR No. 141/2014 registered in Chavni Police Station of Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 r/w 34 of Indian Penal Code.

3. The Crime is registered on the basis of report given by Smt. Smita Khajekar against the petitioners. She was given in marriage to petitioner No. 1 - Mayur on 07/11/2010 and the marriage took place as per the rites and customs of Christian religion. During the pendency of the proceeding, submissions were made for petitioner No. 1 - Mayur, husband, that he wants to withdraw the petition and to that extent, the petition is disposed of as withdrawn.

4. It is the case of complainant/wife that at the time of marriage, dowry of Rs. three lakh was given by her father to her husband. It is her case that she was treated well for first six months after the marriage and after that, the relatives of husband like his parents brother - Mohanish, sisters - Priya and Namrata, the

maternal uncle, wife of maternal uncle started harassing her and they started asking her to bring Rs. three lakh as her husband wanted to start some business. It is her case that they all were abusing her and on occasions, they were giving beating to her.

5. Allegations are made by the complainant that her husband is addicted to liquor and he used to return to home after 3.00 a.m. It is her case that the parents of husband were supplying liquor to him. It is her case that her parents tried to convenience him to behave well, but his conduct did not improve. It is her case that on 10/08/2011 accused gave abuses and beating and she was driven out of the matrimonial house. It is her case that on 27/08/2011 a notice was sent to her and false allegations were made against her. It is her case that she went to the matrimonial house with some mediators on 25/09/2011 and they requested the accused to accept her back in the matrimonial house, but the accused said that their demand of Rs. three lakh needs to met with first. It is her case that her father somehow convinced and promised to give such amount in future and after that, she was accepted in matrimonial house.

6. It is the case of complainant that though she was B.Sc., the accused started saying that such education is not sufficient and so she went to Aurangabad, to the house of her parents and there she completed B.Ed. course. It is her case that her parents spent for this course. It is her case that after completing B.Ed. course she returned to matrimonial house, but she realized that the accused had not given up their demand of Rs. three lakh. It is her case that they again started giving her physical and mental ill-treatment and ultimately they drove her out of matrimonial house on 10/01/2014. It is her case that threat was given to her that they would finish her if she returns without the amount of Rs. three lakh. On the basis of this report, the crime is registered for aforesaid offences.

7. Some record is produced like copy of petition filed under Section 10 of Divorce Act 1869 by the husband in the Family Court, Pune. It shows that it was filed on 19/01/2012. The husband had contended that the complainant/wife was suffering from some mental disorder and she used to become unconscious time and again for no reason. It is his case that treatment was given to her for such disease when she cohabited with him. It is the case of husband that in December 2010, wife left his company and she had taken all her belongings to her parents house. He contended that he tried to bring her back, but she did not give response and then one notice was given on 26/08/2011 through his advocate and it was accepted by the wife. This petition was dismissed for default on 31/05/2013. Second petition was filed by the husband on the same ground on 30/04/2014. In this petition he contended that on 22/11/2010 brother of the husband had some how convinced the complainant to returned back to the matrimonial house and had brought her to the residential place from Pune. It is his case that her father had taken back her to Aurangabad on 02/01/2011 by saying that he would give treatment to her and after the recovery in respect of aforesaid illness, he will reach her to the matrimonial house. It is his case that

after that she did not return to matrimonial house. He has contended that then he gave notice on 26/08/2011 and he called her to his place for resuming cohabitation. He has contended that he had gone to Aurangabad on 28/12/2011 to bring her back, but she said that she wanted divorce from him. It is his case that due to such approach of wife, he filed the first proceeding for divorce on 19/01/2012. It is his case that on 16/05/2012 it was represented to him that the complainant had fully recovered and she was not suffering from multiple personality disorder. It is his case that on 01/07/2012 he went to Aurangabad to bring complainant back to his house, but she was not sent and it was told to him that some more time needs to be given to her for recovery. It is his case that he was then constrained to file second proceeding for divorce which was filed on 30/04/2014. It is his case that since 2/11/2011 there is no cohabitation.

8. The FIR was given on 12/05/2014. Copy of ration card in respect of family of applicant No. 8 - Stella is filed to show that her family had been living separate at different place.

9. As in the FIR, it is mentioned that there was cohabitation till 10/01/2014 the learned counsel for complainant was asked to show some record to that effect. There is no such record. On the other hand, there is record like two divorce proceedings filed by the husband and in that record, there are allegations that complainant was suffering from some mental disorder. The wife herself has admitted that she was doing B.Ed. course and during that period, she was living in the house of her parents and that period was from 2012 to 2013. It is her case that after completing B.Ed. course, she had returned to the matrimonial house. Even the exact month of return to the matrimonial house in the year 2013 is not mentioned. Then, the vague allegations are made that all the accused, then asked her to bring Rs. three lakh from her parents and on that count, there was ill-treatment .

10. Both accused and side of complainant appeared to be highly educated. Vague allegations are made against parents of husband and other relatives like sister, brother, maternal uncle etc. Even when they were living separate, allegations are made against them that there was ill-treatment to her from these relatives. The submissions made show that the husband was gainfully employed at the time of marriage and even on the date of registration of crime also he was gainfully employed. No particulars are given for business, what purpose he demanded amount of Rs. three lakh. There was no reason for the relatives of husband to give ill-treatment to the complainant and ask her to bring such amount for the husband. Aforesaid record and rival contentions show that there is some dispute between the husband and the wife.

11. Due to the wording of provision of section 498-A of I.P.C., when allegations are made against relatives of husband, the crime is required to be registered against the relatives also. The tendency is developed to rope in all the relatives of the husband in such case and ordinarily, such allegations are made to see that not only the husband, but all his relatives are harassed and they are compelled

to come for some settlement. No specific allegations are made as against petitioner Nos. 2 to 8 about the ill-treatment . In the case reported as Chandralekha and Others Vs. State of Rajasthan and Another, , the Apex Court has held that the provision of section 482 of Cr.P.C. needs to be used when allegations against relatives of husband are vague in nature and no specific role is attributed to each of them. In that case the FIR was given late. The facts and circumstances of the present case are also similar. Nothing can be achieved even if chargesheet sheet is filed against petitioner Nos. 2 to 8. It can be said that it would be misuse of process of law and it will amount to unnecessary harassment to the relatives of the husband. This Court holds that discretion under Section 482 of Cr.P.C. needs to be used.

12. In the result, the application is allowed to the extent of petitioner Nos. 2 to 8 viz. Nirmala Mozes Khajekar, Mozes Pawalas Khajekar, Priya @ Minakshi Mozes Khajekar, Mohanish Mozes Khajekar, Namrata Bhagirath Landge, Kanahaya Waghmare, Steela Waghmare. The F.I.R. bearing C.R. No. 141/2014 registered at Chavni Police Station, Aurangabad for the offences punishable under Sections 498-A, 323, 504, 506 r/w. 34 of Indian Penal Code is hereby quashed and set aside to that extent.

Rule is made absolute in aforesaid terms.